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Order 96-7-19

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Served: July 18, 1996

Issued by the Department of Transportation  
on the 12th day of July, 1996

U.S.-Toronto Third Year Service Proceeding

Docket OST-96-1538

**INSTITUTING ORDER**

Summary

By this order we institute a non-oral proceeding to select up to four primary carriers and up to four backup carriers to operate two daily scheduled combination frequencies each between the United States and Toronto under the 1995 air services agreement between the U.S. and Canada.

Background

Under the provisions of the Air Transport Agreement between the United States and Canada ("Agreement") that provides for expanded economic opportunities in the U.S.-Canada aviation market, new service to Toronto is to be phased in over a three-year period. At Toronto, during each of the first two years from the date of the Agreement, the U.S. was able to select up to two additional carriers, with each carrier able to operate up to two daily round-trip frequencies. For the third year, the U.S. is able to select up to four more carriers, with each carrier able to operate up to two daily round-trip frequencies. A designation for the third year may be used to increase the number of frequencies available to a carrier awarded authority for the first or second year, up to a maximum of four daily round-trip frequencies.

The first year Toronto service proceeding ultimately resulted in the award of primary route authority to Delta Air Lines and TWA, with Delta operating between Atlanta and Toronto, and TWA operating between St. Louis and Toronto<sup>3</sup>. The second year service proceeding resulted in the award of primary route authority to Continental and USAir, with Continental operating between Newark and Toronto, and USAir operating between Washington, D.C. (National) and Toronto. We also granted backup authority to Northwest (as backup to both Continental and USAir) to operate two daily round-trip scheduled combination frequencies between Minneapolis/St. Paul and Toronto.

Structure

<sup>1</sup> This Agreement was signed in Ottawa on February 24, 1995.

<sup>2</sup> Any U.S. points and carriers can be selected, including existing gateways and incumbent carriers.

<sup>3</sup> See Order 95-11-1 and Order 96-5-21 for a full description of the circumstances surrounding the first year awards.

To ensure that the selected carriers can institute service when the route rights are available in February 1997, we have decided to institute the *U.S.-Toronto Third Year Service Proceeding* to certificate up to four primary carriers and up to four backup carriers to provide scheduled combination service between the United States and Toronto, Canada.

We invite all U.S. carriers interested in serving the U.S.-Toronto market to file certificate applications for the authority at issue in this proceeding. Such applications should be filed directly into the newly established proceeding docket.<sup>4</sup> Whether a new entrant, a currently designated carrier seeking to serve a new gateway, or a currently designated carrier seeking to increase its frequencies on a route selected in the first or second year case should be selected for the award is a matter that bears on the merits of the selection and will be determined based on the record of this proceeding.

Because the date on which the third year Toronto authority becomes effective under the Agreement is February 24, 1997, we will use expedited procedures to consider the third year Toronto awards. We will grant the U.S.-Toronto authority at issue in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102. The duration of the authority awarded will be five years for primary carriers and one year for backup carriers, unless the latter authority is activated during that time, in which case it will continue for five years. We will also impose a 45-day dormancy provision on these certificates.<sup>5</sup>

The U.S.-Toronto services represent valuable operating rights. Our principal objective in selecting carriers to provide these services is to maximize the public benefits that can be expected to result from awarding new authority. In this regard, we will place primary emphasis on the effects of the applicants' service proposals on the overall market structure and the level of competition both between U.S. and Canadian flag carriers and among U.S. flag carriers in the U.S.-Toronto markets, and any other market(s) shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. We will also consider which carriers will be most likely to offer and maintain service that provides the maximum benefits to the traveling and shipping public. We will consider other factors historically used for carrier selection when they are relevant.

### Evidence Requested

In addition to the evidence required by Part 302, Subpart Q of our regulations, we will require the submission of certain information, as detailed in Appendix A, in order to develop a comparative basis for selection among the carriers in this proceeding. Submissions should contain specific factual information so that further clarification is not necessary. The sources and methodology used for all traffic estimates should be clearly explained.

Applicants are also free to provide such additional information as they consider useful in helping us make our decision.

### Procedural Schedule

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<sup>4</sup> All applications should include all information requested in Part 302, Subpart Q. Additional information requested in the attached evidence request should be filed in accordance with the procedural schedule established. New entrants to the Toronto market should file applications for a new certificate. Currently designated carriers holding certificate authority to serve Toronto may file applications to amend their existing authority to add any new route requested. Should applicants only need to apply for designation<sup>4</sup>, use of the designation to expand frequencies at an existing authorized point), such frequency allocation applications are due by the date specified in the order for applications.

<sup>5</sup> The dormancy provisions would act to cause the authority to expire automatically, and therefore be available for award to another carrier, if service is not provided for a 45-day period.

In view of our desire for a timely decision in these cases, we intend to conduct the proceeding instituted here according to the following schedule:

Applications due:	July 29, 1996
Answers to Applications/ Direct Exhibits due:	August 12, 1996
Rebuttal Exhibits due:	August 26, 1996
Briefs to the DOT Decisionmaker due:	September 9, 1996

All dates indicated are delivery dates. Five copies of all submissions are to be received at the Department Docket Section no later than the dates indicated. Exhibits and briefs will afford ample opportunity to present evidence and arguments.

### ACCORDINGLY,

1. We institute the *U.S.-Toronto Third Year Service Proceeding* which will be decided by non-oral hearing procedures under Subpart Q of our regulations;
2. The proceeding instituted in ordering paragraph 1 shall consider the selection of up to four primary and four backup carriers to provide scheduled combination service between the U.S. and Toronto; we will also consider the award of additional frequencies to those carriers selected as primary carriers in the first and second year U.S.-Toronto service proceedings; and what terms, conditions, and limitations, if any, should be placed on any authority awarded in these proceedings; and
3. We will serve a copy of this order on all U.S. certificated air carriers.

By:

Patrick V. Murphy  
Deputy Assistant Secretary  
for Aviation and International Affairs

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<sup>6</sup> The original filing should be on 8 1/2" X 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

<sup>7</sup> A computer diskette copy of all exhibits and briefs prepared using electronic spreadsheet or word processing programs should also be filed with the Economic and Financial Analysis Division of the Office of Aviation Analysis, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS-formatted. Exhibits and briefs prepared with Microsoft Excel (version 5.x or earlier), Lotus 1-2-3 (version 3.x or earlier), Microsoft Word (version 6.x or earlier), or Wordperfect (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits and briefs via email to our Internet address: dot\_dockets@postmaster.dot.gov. Parties using other software may either file exhibits and briefs in the foregoing formats, or (2) contact the Economic and Financial Analysis Division at (202) 366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy, however, will be the official record.

(SEAL)

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on the World Wide Web at  
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*